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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 309(j))

of the Communications Act)

-- Competitive Bidding for Commercial)

Broadcast and Instructional Television Fixed)

Service Licenses)

Reexamination of the Policy)

Statement on Comparative)

Broadcast Hearings)

Proposals to Reform the Commission's)

Comparative Hearing Process to)

Expedite the Resolution of Cases)

MM Docket No. 97-234

GC Docket No. 92-52

GEN Docket No. 90-264

Comments of American Women In Radio & Television, Inc.

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Summary

AWRT presents statistical evidence that gender-based auction incentives are constitutionally permissible in broadcast auctions as a means to redress the lingering effects of discrimination against women and to promote the laudable statutory goal of diversity in media voices and in spectrum ownership. Gender-based policies for promoting opportunities for women in broadcast auctions will remedy discrimination that women have faced and continued to face In:

- lending and access to capital;
- employment and advancement through the glass ceiling; and
- education where federally supported schools could bar women until 1972.

Gender-based policies will also promote the important statutory non-remedial goals of fostering diversity in broadcast voice and ownership.

Based on this evidence, AWRT recommends that prior to the auction of any broadcast spectrum, the Commission:

1. complete a comprehensive study of female ownership of communications companies and the nexus between female ownership and diversity in media voices;
2. adopt tiered bidding credits that include credits for women-owned businesses that exceed the level of bidding credits provided to small businesses;
3. Provide installment payments as an option for paying for licenses won by women-owned businesses during a broadcast auction; and
4. Require auction applicants' designation of licenses in their initial application to match their eligibility as determined by the upfront payment by requiring simultaneous submission of the short form application and upfront payment;
5. Impose stringent standards for demonstrating *de facto* and *de jure* control by women of women-owned companies.

Comments of American Women In Radio & Television, Inc.

American Women in Radio & Television, Inc. ("AWRT") hereby files these comments demonstrating that there is an exceedingly persuasive justification and constitutional basis for the Commission to adopt gender-based incentives for auctions of broadcast spectrum. In these comments, AWRT presents statistical evidence that gender-based auction incentives are constitutionally permissible as a means to redress the lingering effects of discrimination against women and to promote the laudable statutory goal of diversity in media voices and in spectrum ownership. AWRT also encourages the Commission to supplement this evidence by conducting a comprehensive study on female-ownership of communications companies.

Based on this evidence, AWRT recommends that prior to the auction of any broadcast spectrum, the Commission:

1. complete a comprehensive study of female ownership of communications companies and the nexus between female ownership and diversity in media voices;
2. adopt tiered bidding credits that include credits for women-owned businesses that exceed the level of bidding credits provided to small businesses;
3. Provide installment payments as an option for paying for licenses won by women-owned businesses during a broadcast auction; and
4. Require auction applicants' designation of licenses in their initial application to match their eligibility as determined by the upfront payment by requiring simultaneous submission of the short form application and upfront payment;
5. Impose stringent standards for demonstrating *de facto* and *de jure* control by women of women-owned companies.

I. AWRT

AWRT is a non-profit, national organization of professional women and men who work in radio, television, cable advertising – essentially the electronic media – and closely allied fields. The mission of AWRT is to enhance the impact of women in the electronic media and allied fields by educating, advocating, and acting as a resource to its members and the industry. Since 1951, AWRT has worked to promote the entry and advancement of women in the management and ownership of broadcast, cable and

other communications companies. Besides conducting its own educational and professional development activities to promote and facilitate ownership and management of communications companies by women, AWRT co-sponsored with the Commission the two highly successful symposia: "Women in the Telecommunications Marketplace" and the "The Women Entrepreneur". In addition, for over 25 years, AWRT's foundation has held an annual awards event dedicated to recognizing individuals in radio, television and cable entertainment programs, commercials, news feature and other programs who encourage a positive and realistic portrayal of women in radio and television. Named after the legendary radio, television, and film entertainer, the Gracie Allen awards are nationally recognized as demonstrating the diversity that women's voices bring to broadcasting.

As an integral part of its support of women's advancement in broadcasting, AWRT has actively participated in proceedings at the Commission that address ownership and employment opportunities. AWRT filed extensive comments supporting incentives for female ownership in response to the Commission's Notice of Inquiry to identify market entry barriers for small businesses.¹ A copy of AWRT's comments which contain persuasive evidence that support the adoption of incentives for women-owned businesses in the auction of broadcast spectrum are being provided under separate cover, which is to follow. AWRT provides a brief summary of the data and evidence provided in those comments in the following comments.

II. The Historical Record of Auctions to Date and Broadcast Ownership Demonstrate that Gender-Specific Rules Are Necessary to Combat The Lingering Effects of Gender Discrimination and to Promote Diversity of Media Voices.

A. Auction Data Reveal that Gender-Neutral Bidding Incentives Reduce Dramatically the Ability of Women-Owned Businesses to Acquire Spectrum Licenses.

Data from the FCC's auctions demonstrate that women-owned companies have not fared well in acquiring spectrum licenses through auctions after the elimination of gender-based bidding incentives. An analysis of the data demonstrates that the number of successful women-owned licensees dropped dramatically after the Commission's decision to move to gender-neutral rules. The following chart

summarizes the auction data submitted by the Commission to Congress in its report on spectrum auctions:

Auction	Women-Owned Incentives	Women-Owned Licensees	Licenses owned by Women
Narrowband PCS Nationwide	No	0%	0%
IVDS	Yes	39.3%	47.4%
Regional Narrowband PCS	Yes	33.3%	33.3%
A/B Block PCS	No	4.7%	1%
C Block PCS	No	16.6%	19.6%
MDS	No	5.9%	6.5%
SMR	No	6.2%	8.3%
110 DBS	No	0%	0%
148 DBS	No	0%	0%
D/E/F Block PCS	No	6.4%	8.6%
Cellular Unserved	No	10%	25%
WCS	No	0%	0%
DARS	No	0%	0%

The data reveal that in auctions with specific bidding incentives and financing plans targeted to remedying discrimination against women, women-owned businesses generally acquired more than 30% of the licenses. The percentage of successful women-owned licensees in these auctions is comparable to the percentage of women-owned businesses in the U.S. – 34%.² Women are projected to own 40% of U.S. businesses by the year 2000 according to the National Association of Women Business Owners.³

The data also provide persuasive evidence that gender-neutral bidding incentives for small businesses do not adequately redress the market-entry barriers that women face in raising capital to successfully acquire spectrum licenses. The auction records provide powerful evidence that gender-

¹ In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113. AWRT's comments are referred to as AWRT 257 Comments.

² According to the 1992 U.S. Census, 5,888,883 of the 17,253,143 firms in the U.S. are women-owned. "1992 Survey of Women-Owned Businesses", Excerpts, United States Department of Commerce, Economics and Statistics Administration, Bureau of the Census ("1992 Census") at 10. According to a 1995 Report by the National Foundation for Women Business Owners and Dun & Bradstreet Information Services in 1995 there were over 7.7 Million women-owned businesses in the U.S., employing 15.5 million people and generating nearly \$1.4 Trillion in sales. With this workforce, women employed 35% more people in the U.S. than the Fortune 500 companies worldwide. See AWRT 257 Comments at Exhibit 3.

neutral rules do not foster the wide dissemination of licenses to companies, including women-owned companies, and that government policies and incentives are needed to overcome discrimination against women in the communications industry and in lending. The data further reveal that financing for communications companies – in any form (*i.e.* debt or equity) – is not readily available absent government incentives to invest in women-owned companies.

The data affirms the Department of Justice's findings of the important role of government policies in combating discrimination following the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). In a survey of evidence of discrimination against minorities that provides a compelling government interest in redressing that discrimination, the Department of Justice found:

the information in the state and local studies, and the impact of the cut-back in affirmative action at the state and local level after *Croson*, provide strong evidence that further demonstrates the compelling interest for affirmative action measures in federal procurement . . . The information also indicates that without affirmative action, minorities would tend to remain locked out of contracting markets.⁴

The FCC's decision to eliminate gender-based bidding incentives from all auctions since the Supreme Court's *Adarand* in order to develop a record on the need for such incentives has now produced just such a record. Over three years have passed since the *Adarand* was decided, multiple auctions have been held, and despite repeated submissions of evidence by AWRT, and continued calls for a study on female ownership from respected policy leaders⁵, no study has been completed and women are in danger of being left "on the sidelines of the communications revolution".⁶

³ "Women's Venture Capital Fund Reaches \$5.5 Million", W. Post, Jan. 24, 1998 at D1 ("Women Venture"). A copy of the article is attached to these comments.

⁴ Department of Justice, *Proposed Reforms to Affirmative Action in Federal Procurement*, 61 Fed. Reg. 26042 (May 23, 1996) ("DOJ Procurement Reform") at Appendix A, 26062.

⁵ See Letter to Chairman Reed E. Hundt from Congressman Edward J. Markey, Congressman Gene Green, Congresswoman Karen McCarthy, Congressman Bobby Rush, Congressman Albert R. Wynn, Congressman Eliot L. Engel, Congressman Ron Klink, Congresswoman Anna G. Eshoo, and Congressman Thomas J. Manton dated July 23, 1997. ("Congressional Letter")

⁶ See Statement of William E. Kennard, Confirmation Hearing before the Commerce, Science, and Transportation Committee, U.S. Senate, Oct. 1, 1997 at 4 ("I will work hard to ensure that the communications

B. Census Data

The FCC's auction results provide the most recent data on female ownership of communications facilities. There is no reliable data for female-ownership of broadcast stations. The Bureau of the Census collects certain data on women-owned companies. The Census data, however, is limited by its generality and its delayed release. The latest census on women-owned businesses was reported for the year 1992. In that year, women reportedly owned 31.1% of the communications firms in the U.S. Of these firms 14.7% of the women-owned communications firms had paid employees.⁷ Only 2.3% of the communications firms with paid employees were owned by women.⁸

Unfortunately, the 1992 Census data has three shortcomings as the primary foundation for Commission policy. **First**, the dynamic changes in the communications industry, especially since the advent of auction and the passage of the 1996 Telecommunications Act, render the Census data woefully out of date. **Second**, the data reported in the 1992 Census on women-owned businesses is aggregated data for the communications industry. The communications industry defined by the two digit Standard Industrial Code 48, includes establishments furnishing point-to-point communications services, whether intended to be received aurally or visually and radio and television broadcasting. The 1992 Census did not include a more specific breakdown of ownership to the four level SIC code. Such a breakdown would provide valuable information on the distribution of female ownership among different communications media. **Third**, for the first time, the 1992 Census of women-owned businesses includes "C" corporations previously excluded from the Census count of women-owned businesses. Accordingly, a comparison of the 1992 and 1987 Census on women-owned businesses differ in their coverage of women-owned companies making any comparison suspect.

revolution is inclusive – not exclusive - and that small businesses, women and minorities are not left on the sidelines of the communications revolution").

⁷ 1992 Census at 10.

⁸ *Id.* at 9-10.

III. Gender-Based Policies are Constitutional and Serve the Important and Compelling Government Interest in Redressing Discrimination Against Women.

As recognized in the NPRM, gender-based measures adopted by the Commission will be subjected by the courts to intermediate not strict scrutiny.⁹ The level of review is unchanged by the U.S. Supreme Court's decision in *United States v. Virginia Military Institute*, invalidating the single sex admission policy of Virginia Military Institute, and the Supreme Court's decision in *Adarand*.

A. Gender-Based Programs are Subject to Intermediate Scrutiny

The U.S. Supreme Court and lower courts consistently have applied intermediate scrutiny to gender-based government policies. This level of scrutiny is less rigorous than the standard of strict scrutiny applied to race-based programs in *Adarand*. In *VMI*, the Supreme Court had the opportunity and chose not to change the level of scrutiny of gender-based programs involving government action. The Court's election not to change the standard of review for programs based on gender was explicit: "[t]he Court thus far has reserved most stringent judicial scrutiny for classifications based on race or national origin."¹⁰

In striking down VMI's single sex policy, the Court reiterated the standard test for reviewing gender-based programs previously applied by the Supreme Court in *Mississippi Univ. for Women v. Hogan*.¹¹ As articulated by the Court in *VMI* for a court to sustain a gender-based program it must be supported by an exceedingly persuasive justification provided by the government. An exceedingly persuasive justification will be found if the government demonstrates its gender-based policies satisfy two criteria:

- (1) the classification serves important governmental objectives; and
- (2) the discriminatory means employed are substantially related to the achievement of those objectives.

⁹ *United States v. Virginia Military Institute*, 116 S.Ct. 2264 (1996).

¹⁰ *Id.*

¹¹ 458 U.S. 718 (1982).

Compensatory programs for women were recognized by the Court as permissible government objectives in *VMI*:

Sex classifications may be used to compensate women 'for particular economic disabilities they have suffered', *Califano v. Webster*, 430 U.S. 313, 320 (1977) (*per curiam*), 'to promote equal employment opportunity' see *California Federal Sav. & Loan Assn. V. Guerra*, 479 U.S. 272, 289 (1977), and to advance full development of the talent and capacities of our Nation's people.¹²

Gender-based classifications may not be used, however, to create or perpetuate legal, social and economic inferiority of women.

B. Important and Compelling Government Interests Exist in Eradicating Sex Discrimination and its Lingering Effects

As the Court's opinion in *VMI* made clear, the Court's decision in *Adarand* does not bar or change the intermediate level of review a court would apply to policies adopted by the FCC to promote female ownership of broadcast companies. Furthermore, even if strict scrutiny were to apply to any gender-based programs adopted by the Commission, such policies could be narrowly tailored to serve the compelling government interest of eradicating the lingering effects of gender discrimination and to achieve Congress' goal of widely disseminating spectrum licenses through the auction process,¹³ and fostering a diversity of media voices.¹⁴ The Supreme Court's decision in *Adarand* should not be treated as the death knell for policies to promote diversity in communications ownership or for gender-based bidding incentives. As Justice O'Connor noted in her opinion for the Court, strict scrutiny is not strict in theory, but fatal in fact.¹⁵

¹² *VMI*, 116 S.Ct. 2264.

¹³ 47 U.S.C. § 309(j).

¹⁴ 47 U.S.C. § 257.

¹⁵ *Adarand*, 115 S.Ct. 2097.

Similarly, the D.C. Circuit's decision in *Lamprecht v. FCC*¹⁶ is not fatal to the adoption of gender-based preferences for broadcast auctions. The decision in *Lamprecht* applied intermediate scrutiny to the Commission's gender-based policy. The policy was invalidated based on the an insufficient record. Specifically, the court found that a strong record was required to demonstrate that female ownership promotes viewpoint diversity – a record the court found lacking in the case before it. The *Lamprecht* decision does not prohibit the adoption of policies to promote female ownership of mass media facilities provided that a nexus between ownership and viewpoint diversity can be established. In addition, Section 309(j) provides a legal foundation for Commission policies promoting opportunities for women-owned businesses that was not present in *Lamprecht*.

A compelling interest exists in remedying gender discrimination in the public sector and by government practices that sustain or subsidize gender discrimination by private actors. As the Department of Justice has stated:

- Congress has a compelling interest in exercising its constitutional power to remedy the impact of private discrimination on the ability of minority business to compete in contracting markets.
- Congress has a compelling interest in exercising its constitutional power to redress the statistical disparities reflected in the studies that give rise to an inference of discrimination by state and local governments, or at a minimum suggest that those governments are compounding the impact of private discrimination through ostensibly neutral procurement practices that perpetuate barriers to minority contracting opportunities.
- Congress has a compelling interest in ensuring that expenditures by the federal government do not inadvertently subsidize the discrimination by private and public actors . . . Were that to occur, the federal government would itself become a participant in that discrimination through the procurement practices that serve to sustain impediments to minority opportunity in national contracting markets.¹⁷

Similar compelling interests, and certainly important government objectives, exist in eradicating market entry barriers that exist for women in acquiring broadcast licenses. These policies are supported as remedial measures to redress discrimination against women and as non-remedial measures to achieve

¹⁶ 958 F.2d 382 (D.C. Cir. 1992).

¹⁷ DOJ Procurement Reform, 61 Fed. Reg. at 26062-63.

Congress' goal of diversity in spectrum assignment and media voices. Such interests are strengthened by the Commission's role in allocating the government resources of the radio frequency spectrum, similar to the allocation of federal procurement dollars, and in its regulation of a vast majority of communications companies in the United States.

C. Important Government Objectives and Compelling Government Interests Exist that Provide an Exceeding Persuasive Justification for Adopting Gender-Based Policies to Eradicate Market Entry Barriers Faced by Women-Owned Communications Firms

The communications industry has been identified as a key growth area for entrepreneurs and for women by the National Telecommunications and Information Administration and the Federal Glass Ceiling Commission. Women are ready to seize the opportunities for ownership in the industry if they can surmount the discriminatory barriers that have restrained their ability to access capital, receive engineering degrees, and restricted their employment and advancement. Commission policies that promote female ownership support the exceeding persuasive justification and compelling government interest of remedying discrimination against women.

(1) Discrimination in Lending

The Supreme Court in *VMI* found that sex-based policies may be used to compensate women for particular economic disabilities they have suffered. Women-owned businesses face striking economic disabilities in their ability to raise capital. These barriers do not appear to be faced by non-minority men. The severity of the economic disability for women is magnified in the communications industry which is capital intensive. The economic disability faced by women spans the range of financing alternatives:

- One-third of women-owned business owners perceive some degree of gender-based discrimination by loan officers. Twenty percent report that their loan officer insisted upon their spouse's signature in order to obtain a loan. Fourteen percent of the surveyed women business owners believe that the mere fact that their business was women-owned was an impediment to obtaining financing.
- According to a recent Washington Post article, studies show that less than 2% of the estimated \$6 billion invested by U.S. venture capitalists each year goes to women-owned businesses. Two primary reasons were cited for this low percentage: (1) women typically don't have the contacts at the traditional venture capital firms, whose employees are overwhelmingly male; and (2) women have historically run retail and services businesses that lack the high growth to attract investors.¹⁸

¹⁸

See "Women's Venture".

- With the elimination of government incentives to partner with women entrepreneurs for broadband PCS licenses, many investors terminated their investment plans.¹⁹

Additional case law supports the conclusion that promoting economic opportunity for women is an important government interest. According to the U.S. Supreme Court “[r]eduction in the disparity in economic condition against women has been recognized as such an important government objective.” *Califano v. Webster*, 430 U.S. 313, 317 (1977). See also *Associated General Contractors v. City and County of San Francisco*, 813 F.2d 922 (9th Cir. 1987) (remedying disadvantages women face in the market place is an important government interest); *Coral Constructors CO. v. King County*, 921 F.2d 910, 932 (9th Cir. 1991) (The county “has a legitimate and important interest in remedying the many disadvantages that confront women business owners”).

(2) Discrimination in Employment

The Supreme Court recognized in *VMI* that gender based policies can foster the important government interest of promoting equal employment opportunity. Today, unfortunately, sex-discrimination continues to exist in employment as determined by the bi-partisan Federal Glass Ceiling Commission. Discrimination against women in employment, especially at the higher levels of corporate leadership, has limited the “track record” and contact women can bring to communications ownership. The Federal Glass Ceiling Commission has documented that women have not made significant progress in to the highest levels of corporate management. The Federal Glass Ceiling Commission found:

[a]t the highest level of business, there is indeed a barrier only rarely penetrated by women or persons of color.²⁰

Another stunning finding of the Federal Glass Ceiling Commission was that “in the private sector, equally qualified and similarly situated citizens are being denied equal access to advancement on the basis of gender, race or ethnicity.”²¹ The report found not only few women and minorities in the highest

¹⁹ See AWRP Section 257 Comments.

²⁰ The Federal Glass Ceiling Commission, *Good for Business: Making Full Use of the Nation's Human Capital*, Washington, D.C. (March 1995) (“Glass Ceiling Report”) at iii.

²¹ Id. at 10-11.

level positions but also that “relatively few women and minorities are in a position most likely to lead to the top – the pipeline.”²² These findings are significant when combined with the fact that the National Women’s Business Council cited the marked lack of women with the technical and managerial expertise – plus length of experience -- to start a successful telecommunications business.²³ In a report on minority entrepreneurs in telecommunications, NTIA identified management experience as a key factor in accessing venture capital.²⁴

In its fact finding report, the Federal Glass Ceiling Commission found that women in corporate America believe there has been some movement through the glass ceiling but there is still along way to go.²⁵ Ninety-three percent of the senior executive women surveyed felt that a glass ceiling for women still exists.²⁶ Ninety-five to ninety-seven percent of senior managers are men.²⁷ Far less than 10% of the chief executive offices and chief technical officers in high tech U.S. firms are women.²⁸ As managers, women represented 25.5% of the managers in transportation, communication and public utility firms.²⁹

In response to their inability to penetrate the glass ceiling many women are turning to business ownership as an alternative to the barriers that continue to exist in corporate management.³⁰ Accordingly, a byproduct of the barriers faced by women in rising through the corporate ranks is

²² Id. at iv.

²³ National Women’s Business Council, *Annual Report to the President and Congress* (1992) at 15.

²⁴ “Capital Formation and Investment in Minority Business Enterprises in the Telecommunications Industry”, NTIA, April, 1995 at 16.

²⁵ Glass Ceiling Report at 10.

²⁶ Id. at 148.

²⁷ Id. at 12.

²⁸ *Entrepreneurial Women Engineers*, IEEE Spectrum, August 1996 at 28 (“IEEE Spectrum”).

²⁹ Glass Ceiling Report at 17.

³⁰ IEEE Spectrum at 28.

increased growth in women-owned businesses. Federal policies that promote such ownership provide a valuable and increasingly effective means of redressing the discrimination faced by women in employment.

(3) Discrimination in Education

Prior to enactment of Title IX of the Education Amendments of 1972, sex discrimination was permitted in federally supported education. As a result until 1972, educational opportunities for women were limited. For example, Princeton and Yale did not accept women until 1969. The University of Virginia did not accept women until 1970.³¹ Harvard Business School excluded women until 1963. This government authorized discrimination severely limited the educational opportunities for women. Prior to 1970, most engineering programs had a 10% ceiling on the admission of female students. Today, women still suffer the effects of this discrimination in education. Less than 1 of 10 engineers in the U.S. is a woman.³² The lingering effects of federally supported discrimination in education has inhibited women's climb into the upper echelon of corporate management and their ability to transform that experience into business ownership in capital intensive industries like mass media.

(4) Congressional Findings of Discrimination

Congress repeatedly has noted the discrimination women face in lending and in the communications industry. In 1988, Congress enacted the Women's Business Ownership Act which found in part:

- women-owned business has become a major contributor to the American economy by providing goods and services, revenues and jobs;
- over the past two decades there has been substantial gains in the social and economic status of women as they have sought economic equality and independence;

³¹ National Women's Law Center, *Discrimination Against Women in Education: Why Affirmative Action for Women in Education Remains Essential* (Sept. 1995) at 1 ("NWLC Bulletin").

³² IEEE Spectrum at 28.

- despite such progress, women, as a group, are subject to discrimination in entrepreneurial endeavors due to their gender;
- such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;
- it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;
- the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and further increase the economic viability of the Nation.³³

In the House Report on the 1992 Cable Act, the Energy and Commerce Committee noted:

The Courts and the Commission have consistently recognized that the increasing amount of programming designed to address the needs and interests of minorities and women in fundamentally related to the number of minority and women employees in the upper positions with media companies. In addition, the Commission recognizes that a strong EEO policy is necessary to assure sufficient numbers of minorities and women gain professional management level experience within the television industry, and thus that significant numbers of minorities and women obtain the background and training to take advantage of existing and future television broadcast ownership opportunities . . . The Committee notes that women and minorities are still significantly under-represented as employees and owners in the industry.³⁴

IV. Diversity of Ownership and Viewpoints is Important to the Public Interest

Gender-specific incentives are also appropriate in broadcast auctions to promote the non-remedial goals of diversity in mass media ownership and voices. Congress has endorsed these goals as an important element of the spectrum auction process. In Section 257 and 309(j) of the Communications Act, Congress recognized several non-remedial interests that provide an exceeding persuasive justification for Commission policies that provide incentives to women-owned businesses in broadcast auctions. First, in Section 257, Congress directed the FCC to eliminate market entry barriers to “promote the policies and purposes of this Act **favoring diversity of media voices**, vigorous economic competition, technological advancement and promotion of the public interest, convenience and necessity.” Incentives to foster female ownership of broadcast licenses will promote a diversity of media voices.

³³ 15 U.S.C. § 631(h).

³⁴ H.R. Report No. 102-628, 102d Cong., 2d Sess., at 144 (1992).

Available evidence demonstrates the different choices women make on issues and in viewpoint. A recent study by San Diego State University demonstrated that when television shows employ one or more female executive producers, producers, directors, or writers, female characters more often speak, introduce topics of conversation, have the last word, and advise others. Statistics from AWRP's annual Gracie awards also demonstrate the influence that women have on content when they are in a decision making role. Winners of AWRP's Gracie awards are selected for their positive and realistic portrayal of women in radio and television. In 1996, 80% of the award winners had a woman executive producer or producer even though women in those positions are scarce. For example, a 1996 study by San Diego State University concluded that women are only 16% of executive producers and 18% of producers for prime time. In 1986, a decade earlier, an analysis of local radio and television station entries found that for radio entries, women represented 84.2% of the writers, 58.5% of the producers and 92.9% of the reporters/hosts.

Additional evidence demonstrating the differing choices that women make on issues and in viewpoint was provided to the Commission in comments filed in MM Dockets No. 94-149, 94-140 on May 17, 1995 by the Citizens Communications Center Project. The research and analysis presented by the Citizens Communications Center Project confirm that a nexus does exist between female ownership and viewpoint diversity. AWRP encourages the Commission to supplement this record with its own study and academic analysis.

V. Recommendations for Gender-Based Incentives in Broadcast Auctions

A. Completion of Comprehensive Study of Female Ownership

AWRP encourages the Commission to carefully review the record in this proceeding and in the Market Entry Barriers Notice of Inquiry for the persuasive evidence of the continued need for gender-based bidding incentives in the auction. This record should also be supplemented by the Commission's own study that is long overdue. Congressional leaders have advised the Commission of their support for

a study and the use of auctions revenues to fund that study. In their July 23, 1997 letter to then Chairman Hundt, these members of Congress noted the following concerns:

we are concerned that budget policy pressure may unwittingly work to thwart the ability of women and minority-owned firms to become spectrum licensees. Diversity in mass media licensing has been shown to play an important role in providing programming that reflects the community and its interests . . . As the auction process continues and additional spectrum is allocated to advanced telecommunications services, it is important that the Commission and the Congress understand fully what barriers, if any, small businesses and women and minority owned firms face in attempting to participate fully in the communications industry. We believe that this can be achieved thorough a full study which collects data, analyzes the faces, and provides a recommendation on appropriate policies. We request that the Commission work to expeditiously conduct such a study and we fully support the use of auction revenues to complete it.³⁵

B. Adopt Tiered Bidding Credits for Women-Owned Businesses

As the auction data demonstrate, auction incentives targeted to women-owned firms are important to provide women realistic opportunities to compete for broadcast licenses. The need for a differential is particularly acute in broadcasting since the Commission has indicated in the NPRM that most broadcasters would qualify as small businesses. AWRT encourages the Commission to adopt bidding credits for the auction that provide at least a 10% differential between the smallest business size and women-owned businesses. AWRT also encourages the Commission to use varying size standards to tier the bidding credits of different small businesses. AWRT supports the use of a three tiered structure similar to the one being used for the LMDS auction with lower revenue thresholds.

C. Provide Installment Payments As An Option for Paying for Licenses

Installment payments more than any other bidding tool provide businesses owned by women, a sound means of participating in spectrum auctions and raising the necessary capital to pay for both licenses and station construction. The installment payments that the Commission has provided in auctions for certain wireless services, such as PCS, recognized and attempted to address this real barrier faced by small businesses and those owned by women. Congress recognized the value of installment payments as well by requiring the Commission to "consider alternative payment schedules and methods

of calculations, including lump sums or guaranteed installment payments" in structuring competitive bidding rules. Section 309(j)(4)(A).

While the Commission currently faces serious issues with payments for certain licenses, the financial state of specific licensees should not dictate the future dissemination of licenses and the structure of broadcast auction rules. The absence of installment payments for women-owned businesses, especially when the auction is open to bidders regardless of size, may have profound implications on the wide dissemination of licenses and eliminate the opportunity for women-owned small businesses to fully participate in the auctions and as future broadcast owners. The Commission in its efforts to deal with issues of default, should not set the course for a more limited dissemination of licenses and should adopt installment payments for women-owned businesses that participate in broadcast auctions.

D. Require Auction Applicants to Designate Licenses and Eligibility Simultaneously

The Commission should require the filing of short form applications and the submission of upfront payments at the same with permit licenses limited to the eligibility limit. This is important to prevent a determination of mutual exclusivity merely because a bidder wants to retain flexibility in the auction. It is common for bidders to apply to bid for all markets that are being licensed at the time they submit their short form application. This provides bidders with the ultimate flexibility to bid on all markets. This flexibility ultimately is limited, however, by the amount of the upfront payments submitted prior to the start of the auction which determines bidder eligibility. Bidders eligibility is often far below that required to bid on all licenses. The unintended result is that mutual exclusivity may be determined for more licenses than actually warranted.

For example, one bidder may file only to apply for a station license in New York City. Another bidder not interested in the New York station may file an application to bid on all licenses including New York City to maximize its flexibility. If this bidder subsequently submits an upfront payment, however, that excludes eligibility to bid on the New York station it would not be eligible to bid on that license in the auction. Based on the initial short form filings, however, the determination of mutual exclusivity is made and the New York City license is auctioned. If bidders were required to make the decision of market designation at the time of determining the size of their upfront payment, the decision of mutual exclusivity and therefore licenses to auction may differ. AWRT believes that all bidders would benefit

if the bidder discipline of the upfront payment was imposed simultaneously with the filing of the short form application.

E. Impose Stringent Standards for Demonstrating De Facto and De Jure Control

AWRT supports a stringent review of a bidder's ability to demonstrate *de facto* and *de jure* control over an applicant, especially if the bidder is eligible for a bidding credit. AWRT encourages the Commission to adopt specific guidelines for the broadcast auctions that include a minimum equity percentage that should be held by the qualifying investors. This ownership interest could be held in the form of management options provided they can be exercised upon certain objective conditions. AWRT believes such standards are necessary to ensure that qualified women-owned businesses have the real opportunity to own and control their broadcast licenses. Without such standards, women entrepreneurs are likely to be limited in their equity participation. This is especially true if the auctions are all cash auctions and as such require an immediate payment without installment payments. Accordingly, AWRT encourages the Commission to adopt clear guidelines on minimum ownership requirements.

VI. Conclusion

Based on the strong data documenting the lingering effects of discrimination against women, AWRT urges the FCC to promote the goal of diversity in voice and in spectrum ownership. Adopting gender-based incentives will allow the industry to maximize its ability to tap into many segments of the public and less vulnerable to discrimination.

Respectfully Submitted,
AMERICAN WOMEN IN RADIO &
TELEVISION, INC.

By:


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Director

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January 26, 1998

Exhibits

- 1) Letter from Edward Markey and members of the House of Representatives Telecommunications, Trade and Consumer Protection Subcommittee.
- 2) "Women's Venture Capital Fund Reaches \$5.5 Million," *The Washington Post*.
- 3) AWRP comments in the Section 257 proceeding (under *separate* cover).

Congress of the United States
House of Representatives
Washington, DC 20515

July 23, 1997

The Honorable Reed E. Hundt
Chairman, Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Chairman:

As members of the House Telecommunications, Trade and Consumer Protection Subcommittee, we are concerned about the increasing emphasis placed upon spectrum auction revenue to assist in balancing the Federal budget. We find that placing budgetary priorities foremost in Commission licensing decisions ultimately shortchanges the American public because spectrum allocation and licensing decisions must encompass a broad interpretation of the public interest, of which taxpayer interests are but one part. A short-term, temporary injection of cash into the Federal treasury for the purpose of achieving revenue goals for an arbitrary 5-year budget target serves budgetary interests, but it does not necessarily serve the broader public interest.

In particular, we are concerned that budget policy pressures may unwittingly work to thwart the ability of women and minority-owned firms to become spectrum licensees. Diversity in mass media licensing has been shown to play an important role in providing programming that reflects the community and its interests. Furthermore, the wide dissemination of licenses to applicants, including small businesses and businesses owned by women and minorities, was recognized by Congress as a fundamental goal of the spectrum auction process when we first granted such authority to the Commission as part of the 1993 Omnibus Budget Reconciliation Act.

This *fundamental* goal is not only supported by Congress, but also by President Clinton. As he recently said in his commencement remarks at the University of California-San Diego June 14th: "We must continue to expand opportunity. Full participation in our strong and growing economy is the best antidote to envy, despair, and racism. We must press forward to move millions more from poverty and welfare to work; to bring the spark of enterprise to inner cities...We should not stop trying to equalize economic opportunity."

CHAPTER

B26

LAST NAME	FIRST NAME	COMPANY	ADDRESS	CITY	ST	ZIP	DUES AMOUNT	ANNIV DATE	EXPIRED ATE	PHONE	FAX	COUNT
Benns	Ying Hua	WFLI-TV UPN 53	621 O'Gady Dr.	Chattanooga	TN	37419	\$125.00	7/29/91	6/30/98	706-694-3337	706-694-4112	1
Binford	Susan	Turner Broadcasting System, Inc.	1050 Techwood Dr., NW	Atlanta	GA	30318	\$125.00	8/31/95	8/31/98	404-885-4290	404-885-4298	1
Bundrick	Donna	S.C. Dept. of Agriculture	PO Box 11280	Columbia	SC	29211	\$125.00	9/30/76	6/30/98	803-734-2200		1
Finkelstein	Audrey	WLRN-FM	815 Catalonia Ave.	Coral Gables	FL	33134	\$125.00	2/28/68	6/30/98	305-995-1717	305-448-7130	1
Goins	DeAnna	WWSB	5725 Lawton Dr.	Sarasota	FL	34233	\$125.00	9/30/95	9/30/98	941-923-8840	941-924-3971	1
Hunt	Audrey		6821 Crosfield Rd.	Columbia	SC	29206	\$0.00	7/31/63	12/31/99	803-787-9015		1
Kiley	Liz	Video Juke Box Network	1080 Beech Tree Lane	Brentwood	TN	37027	\$125.00	11/13/92	6/30/98			1
McDermott	Angela		701 Poinsettia Rd., #222	Belleair	FL	33756	\$62.50	3/31/54	6/30/98	813-585-5896		1
Nicolau	Carolina	GEMS Television	10360 USA Today Way	Miramar	FL	33025	\$125.00	12/31/94	12/31/97	954-430-7832	954-430-8338	1
Parker	Roslyn	Adelphia Cable	2001 W Blue Heron	Riviera Beach	FL	33403	\$125.00	1/31/97	1/31/99	561-844-3211	561-944-6733	1
Sheppard	Boo	Time Warner Cable	PO Box 1485	Orangeburg	SC	29115	\$125.00	12/19/89	6/30/98	803-534-7373	803-534-5119	1
Villanueva	Mari Carmen	Villanueva Productions Inc.	7920 W Dr., #18	North Bay Villa	FL	33141	\$125.00	1/31/97	1/31/99	305-756-7013		1
Whelan	Michael	Golf Channel, The	7580 Commerce Center Dr.	Orlando	FL	32819	\$125.00	1/31/97	1/31/98	407-363-4653	407-345-4604	1
Williams	Wendy	WCLK	111 James P. Brawley Dr., SW	Atlanta	GA	30308	\$125.00	3/31/97	3/31/98	404-880-8274	404-380-8869	1
Woolley	Scott	Five Star Productions	430 S Congress Ave.	Delray Beach	FL	33445	\$125.00	11/30/97	11/30/98	561-279-7827	561-279-9395	1
Zenobi	Gary	WDZL	2055 Lee St.	Hollywood	FL	33020	\$125.00	3/25/88	6/30/98	305-925-3939	305-921-6186	1
Summary for 'CHAPTER' = B26 (16 detail records)												
Sum							\$1,812.50					16

The Honorable Reed E. Hundt

July 23, 1997

Page 2

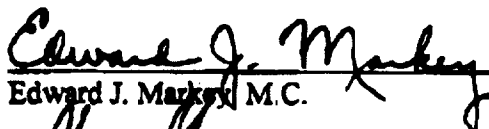
If the government proceeds down the current path of auctioning all the available spectrum to the highest bidder, it will put diversity and economic opportunity in jeopardy just to satisfy an arbitrary budget quota. As the President also noted, "Diversity will enrich our lives in non-material ways -- deepening our understanding of human nature and human differences, making communities more exciting, more enjoyable, more meaningful."

The Commission has indicated previously that it will collect and evaluate evidence of the barriers faced by women and minorities in becoming licensees. It is vital that reliable information and analysis regarding the participation of such businesses in licensed communications services is obtained in order to gauge the extent to which the current methodology for assigning spectrum serves the broader public interest. As you know, women-owned businesses are an extremely important growth component of the U.S. economy: nationwide women-owned businesses currently represent approximately 34% of all businesses in the U.S. By contrast, this growth and contribution does not appear to be mirrored in the communications sector. Furthermore, women-owned companies have won auction licenses at a rate far below the percentage of women-owned businesses nationwide, a surprising fact given their otherwise strong national presence.

As the auction process continues and additional spectrum is allocated to advanced telecommunications services, it is important that the Commission and the Congress understand fully what barriers, if any, small businesses and women and minority-owned firms face in attempting to participate fully in the communications industry. We believe that this can be achieved through a full study which collects data, analyzes the facts, and provides a recommendation on appropriate policies. We request that the Commission work to expeditiously conduct such a study and we fully support the use of auction revenues to complete it.

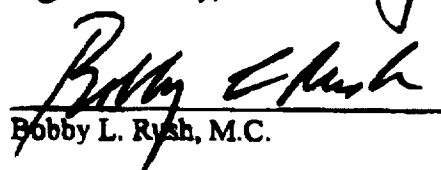
We look forward to being briefed on the Commission's efforts at your earliest convenience.

Sincerely,


Edward J. Markov, M.C.


Gene Green, M.C.


Karen McCarthy, M.C.


Bobby L. Rush, M.C.

LAST NAME	FIRST NAME	COMPANY	ADDRESS	CITY	ST	ZIP	DUES AMOUNT	ADDDY DATE	EXPIRED DATE	PHONE	FAX	COUNT
Alicea	Loreyne	Gems Television	10360 USA Today Way	Miramar	FL	33025	\$125.00	11/30/97	11/30/98	954-430-7860	954-430-8400	1
Archer	Rose Lee	Archer Productions	765 Blue Bird Dr.	Delray Beach	FL	33444	\$62.50	5/3/93	8/31/98	561-272-8144		1
Billens	Barbara	WFLX-TV	130 Dory Rd.N	North Palm Be	FL	33408	\$125.00	6/17/92	3/31/98	561-845-2929	561-863-1238	1
Blackburn	Linda Gail	WPEC-TV	PO Box 198512	West Palm Be	FL	33419-8512	\$125.00	11/20/91	6/30/98	561-844-1212	561-842-1212	1
Browne	Mary Anita	WPTV	PO Box 14276	North Palm Be	FL	33408	\$125.00	9/12/91	7/31/98	561-653-5676	561-655-8947	1
Caracciola	Julie	WKGR/WOLLWEAT	2406 S Congress Ave.	West Palm Be	FL	33406	\$125.00	9/30/97	9/30/98	561-439-1111	561-865-1102	1
Carrera	Cristina	WFLX	4119 W Blue Heron Blvd.	Riviera Beach	FL	33404	\$125.00	5/31/95	5/31/98	561-845-2929	561-863-1238	1
Dahlheimer	Kim	Kim Dahlheimer Design	137 Edgewood Dr.	West Palm Be	FL	33405	\$125.00	7/6/89	6/30/98	561-655-3846	561-655-8046	1
De Pompe	Jacquelin	WFLX Fox 29 TV	4119 W Blue Heron Blvd.	West Palm Be	FL	33404	\$125.00	11/30/97	11/30/98	561-845-2929	561-863-1238	1
Grams	Carolyn	WTVX - 34	207 S Palmway	Lake Worth	FL	33460	\$125.00	5/31/97	5/31/98	561-686-3434	561-625-1256	1
Green	Murray	WFLX-TV	4119 W Blue Heron Blvd.	West Palm Be	FL	33404	\$125.00	5/8/91	6/30/98	561-845-2929	561-881-5591	1
Hall	Carole	News Video Service	6671 W Indiantown Rd., #56-141	Jupiter	FL	33458	\$85.00	5/31/97	5/31/98	561-575-4245	561-575-2423	1
Kwasman	Lois	Lois Kwasman, Creative	2435 24th Lane	Palm Beach G	FL	33418	\$125.00	4/30/82	6/30/98	561-627-6647	561-627-6438	1
Larschan	Patricia	Palm Beach Radio	701 Northpoint Pkwy., #500	West Palm Be	FL	33407	\$125.00	11/27/89	6/30/98	561-686-9505	561-640-9065	1
Lerner	Ana Cristina	Multimedia/Educational Television	One Park Place	Boca Raton	FL	33487	\$125.00	11/30/96	11/30/98	561-997-7771	561-697-8544	1
Marshall	Barbara	Midway Broadcasting/WFLM	6803 S US One	Port St. Lucie	FL	34952	\$125.00	6/30/97	6/30/98	561-460-9356	561-450-2700	1
Nicol	Nancy	WFLX Fox 29	4119 W Blue Heron Blvd	West Palm Be	FL	33404	\$125.00	7/31/96	7/31/98	561-845-2929	561-863-1233	1
Nisenbaum	Cynthia	WFLX FOX 29	2665 NW 41st St.	Boca Raton	FL	33434	\$135.00	9/30/97	9/30/98	561-845-2929	561-863-2969	1
O'Meara	Pat Eileen	WPEC-TV	2115 SW 36th Ave.	Delray Beach	FL	33445	\$125.00	10/31/84	6/30/98			1
Ryan	Jeanne	WFLX-TV	4119 W Blue Heron Blvd.	West Palm Be	FL	33404	\$125.00	9/20/90	2/28/98	561-845-2929	561-863-2969	1
Serrano	Genie	Sunny 104.3/WEAT	701 Northpoint Pkwy, #500	West Palm Be	FL	33407	\$125.00	4/15/91	6/30/98	561-686-9505	561-639-4043	1
Sheldon	Cynthia	WPEC-TV 12	PO Box 198512	West Palm Be	FL	33419	\$125.00	9/1/90	6/30/98	561-844-1212	561-842-1212	1
Staggs	Valerie	WEAT-FM	701 Northpoint Pkwy, #500	West Palm Be	FL	33407	\$125.00	8/31/96	8/31/98	561-686-9505	561-689-4043	1
Triolo	Pam	First Impressions Creative Services, In	205 Worth Ave., #201	Palm Beach	CA	33480	\$125.00	8/31/97	8/31/98	561-655-2031	561-655-2084	1
Wescott	Nancy	Paxson Communications Corp.	500 Australian Ave., S, #501	West Palm Be	FL	33401	\$125.00	4/30/97	4/30/98	561-655-9444	561-655-3655	1

Summary for 'CHAPTER' = B19 (25 detail records)

Sum

\$3,032.50

25